

JUDITH LAMAR LEWIS,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 98-33-A
ACTING ANADARKO AREA	:	
DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	March 4, 1999
Appellee		

Appellant Judith Lamar Lewis seeks review of an October 16, 1997, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning Farming and Grazing Lease No. 45636 on Wichita Allotment No. 659-A. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

It appears that in late 1995, the allotment was owned by three individuals: Marjorie Lamar Conroy owned a 9/16 interest, or 56.25%; Claudine J. Davis owned a 5/16 interest, or 31.25%; and Mae (May) Lamar Davis owned a 2/16 interest, or 12.5%.

On December 4, 1995, the Superintendent, Anadarko Agency, BIA (Superintendent), wrote to Marjorie. He set out three options in regard to leasing the allotment: (1) negotiation of a lease; (2) advertisement of the availability of the allotment by BIA; and (3) a decision not to lease the allotment. There is no evidence in the record that Marjorie actually received this notice or that she responded to it. There is also no evidence that notices were sent to Claudine or Mae.

There is a suggestion in the materials before the Board that Appellant, who is Mae's granddaughter, asked Marjorie in early 1996 to lease the allotment to her. The materials further suggest that Marjorie declined to lease to Appellant because she had already made a verbal commitment to lease to another individual.

Marjorie died on April 3, 1996. She left a will, executed on March 14, 1995, in which she devised a life estate in 4/9 of her 9/16 interest to her daughter, Frieda June Conroy Irving, with remainder to Cassie Cunningham Melton; 2/9 of her 9/16 interest to Coleen Cunningham; and a life estate in 1/3 of her 9/16 interest to her son, Walter John Conroy, with remainder to Cassie.

The lease at issue here was executed on April 23, 1996, by Appellant, Claudine, and Latatia Rolon Medina on behalf of Mae. Latatia, who is Mae's daughter, indicated that she

held a power-of-attorney for Mae. The Superintendent approved the lease on May 10, 1996, and committed the interests held by Marjorie's estate to it.

By letter dated December 24, 1996, Cassie wrote to the Superintendent as a probable heir to Marjorie's estate, asking that her letter be considered "a notice of intent to appeal the lease let to [Appellant] on or about April 23, 1996," and requesting "that [Appellant's] pending lease be delayed pending your review of this matter." When she did not receive a response to her first letter, Cassie wrote to the Superintendent again on January 24, 1997.

The Superintendent responded on February 7, 1997, stating that he had the authority to join in the lease on behalf of the interests held by Marjorie's estate, and that Cassie did not have any appeal rights because she was not an owner of the allotment.

On March 10, 1997, Cassie wrote to the Anadarko Agency Realty Officer, stating her belief that the Superintendent had failed to address her questions.

Mae died on March 19, 1997. 1/

Cassie again wrote to the Agency Realty Officer on June 13, 1997. She sent the Area Director copies of her June 13, 1997, and December 24, 1996, letters to the Superintendent. In a letter dated June 19, 1997, the Area Director, through the Area Realty Officer, treated Cassie's December 24, 1996, letter as a notice of appeal and established procedures for addressing the appeal. In the proceedings before the Area Director, Cassie filed an amended notice of appeal, and Claudine filed a letter supporting Appellant.

The Area Director issued his decision on October 16, 1997. He held that the Superintendent erred in informing Cassie that she did not have appeal rights. He also held that the Superintendent did not have authority under 25 C.F.R. § 162.3 to commit the interests held by Marjorie's estate to the negotiated lease because the lease was negotiated by the owners of less than a majority interest; did not have authority under 25 C.F.R. § 162.8(e) to grant a lease on behalf of undetermined heirs for a term exceeding two years; and did not properly comply with the requirements of the National Environmental Policy Act, 42 U.S.C. §§ 4321-4335 (1994). He commented that the allotment should have been advertised for a two-year period, and that Appellant might be in violation of Provision 3 of the lease. The Area Director held that the Superintendent's approval of the lease was invalid.

Appellant appealed to the Board. Appellant and Cassie filed briefs on appeal.

Appellant argues that Cassie does not have standing to appeal as a probable devisee. The Board finds that it need not address this argument. Judge Reeh approved Marjorie's March 14,

---

1/ Administrative Law Judge Richard L. Reeh issued an order determining Mae's heirs on Mar. 1, 1999. Estate of Mae (May) Lamar Davis, IP OK 271 P 98.

1995, will on April 7, 1998. Estate of Marjorie Lamar Conroy, No. IP OK 189 P 97. No appeal was taken from Judge Reeh's decision. Therefore, regardless of whether or not Cassie had standing to appeal as a probable heir, she now has standing as an owner. If the Board were to accept Appellant's argument that Cassie did not have standing earlier, under the particular circumstances of this case, it appears that Cassie could begin this proceeding over by filing a new appeal. In order to expedite the final resolution of this matter, the Board will not require Cassie to file a new appeal, but will instead address that part of the Area Director's decision which considered the merits of her objections.

25 C.F.R. § 162.6(b) authorizes the Superintendent to join the interests of undetermined heirs in a negotiated lease if "the owners of a majority interest, or their representatives, who may grant leases under § 162.3, have negotiated a lease satisfactory to the Secretary." The Superintendent apparently found the lease negotiated by Claudine and Latatia satisfactory, perhaps in part because it had a lease rental significantly higher than the appraised value. However, the interests owned and represented by Claudine and Latatia were less than a majority. Therefore, the Superintendent lacked authority under 25 C.F.R. § 162.6(b) to join the interests held by Marjorie's estate in the negotiated lease. Instead, his authority to grant a lease on behalf of Marjorie's estate was set out in 25 C.F.R. § 162.2(a)(3), and was limited to a term of two years by 25 C.F.R. § 162.8(e).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's October 16, 1997, decision is affirmed.

---

Kathryn A. Lynn  
Chief Administrative Judge

---

Anita Vogt  
Administrative Judge